

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4852 of 2005

Nimain Charan Das & Anr.

....

Petitioners

Mr. B. Routray,
Sr. Advocate

-versus-

State of Orissa & Ors.

....

Opposite Parties

Mr. S.P. Panda,
Addl. Govt. Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
12.07.2022**

Order No.

22. 1. This writ petition is filed by as many as ten individuals seeking the following relief:-

“

P R A Y E R

The petitioners above named, therefore, pray that this Hon'ble Court may graciously be pleased to

- (i) Admit the writ application;
- (ii) Call for the records;
- (iii) Issue rule Nisi calling upon the Opps. Parties to show cause as to why the impugned order under Annexure-7 shall not be quashed and
- (iv) If the Opps. Parties do not show cause or show insufficient cause, issue a writ in the nature of certiorari or any other appropriate writ/ writs, order/ orders quashing the impugned order under Annexure-7.
- (v) issue a writ of mandamus or any other appropriate writ/ writs, order/ orders, direction/ directions directing the opposite parties, to pay the outstanding dues of the petitioners for the work they have executed

from 1.2.2003 to 31.3.2003 under the scheme for Shelter Belt Plantation of Jagatsinghpur district along with coast of Jagatsinghpur district within a reasonable time to be fixed by this Hon'ble Court without any further delay with interest at the rate of 9% per annum;

And pass any other orders or directions as this Hon'ble Court may deem just and proper.”

2. On the premises that for the Petitioners have all worked under the scheme for Shelter Belt Plantation of Jagatsinghpur district from 1.02.2003 to 31.03.2003, the Petitioners claimed that there should not be any denial for release of their entitlements for the above period along with interest @9% per annum by treating the same to be outstanding dues. This proceeding has already travelled to this Court through W.P(C) No.1392 of 2004. It appears, this writ petition came to be disposed of on 8.03.2004 with a direction to the Deputy Director, Social Forestry Project, Cuttack Division to dispose of the pending representation at the instance of the Petitioners within a period of six weeks. In paragraph no.6 herein it is also alleged that despite such direction, the direction was not complied with and it is averred that in the meantime the D.F.O, Cuttack Division filed application for modification of the aforesaid order. Considering the further request by the D.F.O in the disposed of writ petition, this Court by order dated 27.07.2004 in modification

of its earlier order directed the Divisional Forest Officer, Mangrove Forest Division (Wildlife), Rajnagar to comply with the direction dated 8.03.2004 at least within a period of six weeks. It is pleaded that pursuant to such direction of the High Court the representation of the Petitioner was disposed of vide Annexure-7, but with an order rejecting the claim of the Petitioners. This application is an outcome of such result.

3. The present Writ Petition involves a challenge to the order at Annexure-7 passed by the D.F.O, Cuttack Forest Division thereby rejecting the representation at the instance of the Petitioners involving claim on arrear dues for the period from 01.02.2003 to 31.03.2003.

4. Apart from the grounds stated therein learned counsel for the Petitioners taking this Court to the plea of the contemnor No.5 in CONTC No.660 of 2004 and reading through the paragraph Nos.3, 4 & 5 contended that there has been admission of conducting certain work involving plantation at a particular rate during particular period and finally through paragraph no.5 learned counsel for the Petitioners brought to the notice of the Court that the deponent wrote in the show cause response also letter to the S.F.S, Kujanga to disburse the amount indicated therein. It is further on the basis of

certain disclosures through Annexure-A/5 & B/5 appended to the response of the contemnor available at page 39 & 40 of the brief, learned counsel for the Petitioners also challenged the impugned order in the writ petition.

It is, in the circumstance, a claim is made to allow the writ petition and giving a suitable direction in the matter of release of the outstanding dues involving the Petitioners.

5. In his opposition Mr. Panda, learned State Counsel through the counter affidavit more particularly in paragraph no.8 therein contended that for the disclosures therein there has been clear denial by the competent authority to the entitlement of the Petitioners. There has been raising of some factual disputes to the extent that there is no record to support the engagement of the labourers particularly the Petitioners herein.

It is, in the above premises and for the factual disputes involved therein Mr. Panda, learned State Counsel objected entertainability of the writ petition.

6. It is, at this stage of the matter, learned counsel for the Petitioners in reverting back to the deposition of the Petitioner No.1 and some others available at Annexure-4 contended that at some point of time there has been even examination of the Petitioner and

some others and there has been recording of statement on their entitlements.

7. Considering the rival contentions of the parties, this Court finds, there is no dispute up to the modified order passed by this Court and the direction through disposal of W.P.(C) No.1392 of 2004 on 27.07.2004 thereby giving directions to the D.F.O, Mangro Forest Division (Wild Life), Rajnagar. There is no dispute that there has been disposal of the representation compelling the Petitioners to come by way of the present writ petition. It is here taking into consideration the rival contentions of this parties, the evidence of certain Petitioners under Annexure-4 and reading through the document at Annexure-4 at page 16 of the brief, this Court finds, Nimain Charan Das the Petitioner No.1 in his deposition before the competent authority appears to have stated to have been working in a project as a Contractor and in the process he had utilized at least 17 persons. There is clear statement by this person that he was sometime also working as a Watchman in the particular plantation and there is some arrear to the extent of Rs.12057.50/-. This Court finds, there is grave doubt in the claim of the Petitioner No.1 in the writ petition to the extent that when he claims the labor wages for his working as a contractor in deposition, on the other hand he has

clearly stated he was a contractor while he was working as a watchman. Annexure-4 also clearly demonstrates at several places that this Petitioner No.1 was working as a contractor. From the statement of Mr. Manika Das @ Manika Kumari Das-the Petitioner No.5 as available at page 21 of the brief, this Court finds, even though he has submitted to have worked as a labourer, but he has disclosed through his statement that he had worked from the month March 2001 to May 2004. In paragraph no.7 he has also discussed to have been working as a contractor, but in his further statement he failed to produce any such authorization either working as a contractor or working under any other capacity. Reading through the show cause statement of the contemnors through paragraph nos.3 & 4, this Court again finds, the deponent in their clear statement stated that there is absolutely no material to correlate the Petitioners with the working involved except there is admission that there has been some working and work was to be conducted through the contractor and at a particular rate. There is even clear statement therein that as per practice the deponent had executed most of the labour oriented work on contract basis. Now coming to the counter averments here by the Opposite Parties and whole reading the above, this Court finds, there is grave doubt in connecting the Petitioners with the

work conducted and therefore, relief claimed in the writ petition cannot be entertained on entertainment of a writ petition under Article 226 of the Constitution of India.

8. In the circumstance and for the existence of disputed facts, the writ petition is not entertainable, which is dismissed accordingly.

(Biswanath Rath)
Judge

Ayaskanta Jena

